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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 ANJUM HERRERA,

11 Plaintiff,

No. C 10-02457 WHA

12 v.

13 THE PEPSI BOTTLING GROUP, INC., a
14 Delaware Corporation; DIANNA CONAWAY,
an individual; and DOES 1 to 100, inclusive,**ORDER GRANTING
DEFENDANTS' MOTION
TO TRANSFER AND
VACATING HEARING**

15 Defendants.

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17 In this removed employment action, plaintiff moves for remand back to state court for
18 lack of subject-matter jurisdiction. Defendants concurrently move for dismissal of the sole
19 claim against defendant Dianna Conaway, and for transfer of the suit to the Eastern District
20 of California. Defendants removed the suit from the Sacramento County Superior Court to
21 the wrong district, the Northern District of California, contending that Ms. Conaway was
22 fraudulently joined and that the claim against her should be dismissed. Defendants argue that
23 once the claim against Ms. Conaway is dismissed, the basis for subject-matter jurisdiction,
24 diversity, will be satisfied among the remaining parties. All parties agree that defendants
25 removed to the Northern District of California in error. Plaintiff, however, opposes the motion
26 to transfer, reiterating that the suit should be remanded to the state court.

27 Defendants who wish to remove a civil action must do so "in the district court of the
28 United States for the district and division within which such action is pending . . ." 28 U.S.C.

United States District Court

For the Northern District of California

1 1446(a). It is plain that this suit was removed to the wrong district: the Sacramento County
2 Superior Court is located within the Eastern District of California and defendants removed to
3 the Northern District. The Ninth Circuit has yet to speak to the proper disposition of a suit
4 removed to an incorrect venue. District courts, however, have for some time found that “when
5 a case is removed to the wrong district, a federal district court can transfer the case to the correct
6 venue rather than remand the case to state court.” *Lee v. Thomas Tours & GSA, Inc.*, 1997
7 WL 638428, at *1 (N.D. Cal. Sept. 29, 1997) (internal citations omitted). Furthermore, remand
8 will only “bring about additional delay and expense” when the likely result of a remand is that a
9 suit will simply be removed again, albeit to the proper district. *Ullah v. FDIC*, 852 F.Supp. 218,
10 221 (S.D.N.Y. 1994). Such a scenario is the inevitable outcome here, and this order finds the
11 argument for transfer of this matter to the Eastern District of California persuasive.

12 Plaintiff, citing to 28 U.S.C. 1404(a), argues that this case cannot be transferred to the
13 Eastern District, because a case can only be transferred to a district where it “might have been
14 brought.” This proceeding, plaintiff contends, could not have been brought in the Eastern
15 District because there is no diversity amongst the named parties and thus no subject-matter
16 jurisdiction for this suit in federal court. The issue as to whether or not there is subject-matter
17 jurisdiction, however, is the subject of both plaintiff’s motion to remand, as well as defendants’
18 motion to dismiss — motions that must be heard in the proper venue. If removal, remand, or
19 dismissal are at all warranted in this suit, such determinations belong to the Eastern, not the
20 Northern District. The undersigned, on similar facts, has ordered the transfer of a suit that was
21 improperly removed to the Northern District of California, and there is no compelling reason to
22 change course here. *See Setterland v. Patel*, 2006 WL 335285 (N.D. Cal. Feb. 14, 2006) (where
23 the “case should have been removed to Hawaii, but instead was ‘dropped’ in the Northern
24 District”).

25 For the foregoing reasons, defendants’ motion to transfer is **GRANTED** and this case is
26 hereby **TRANSFERRED** to the United States District Court for the Eastern District of California.
27 In view of the transfer, the undersigned will not rule upon the parties’ pending motions to
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1 dismiss and to remand. Accordingly, the August 5 hearing scheduled for those motions is

2 **VACATED.**

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4 **IT IS SO ORDERED.**

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6 Dated: July 23, 2010.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE